

THIS ELECTRONIC TOLL COLLECTION (ETC) AGREEMENT (this "Agreement") is made and entered into this 4 day of ~~August~~ 2006, by and between **VIRGINIA DEPARTMENT OF TRANSPORTATION ("VDOT")** and Transurban (895) LLC (the "Participating Agency" or "Participant").

WHEREAS, VDOT is the owner and operator of the Virginia Smart Tag Toll Collection System;

WHEREAS, the Participant is the owner and operator of the Pocahontas Parkway, a privately owned and operated toll road;

WHEREAS, the parties have installed and operate compatible electronic toll collection systems for their respective roadways;

WHEREAS, VDOT is responsible for providing ETC Services ("ETC Services") for the Participating Agencies. The Participant and VDOT desire to enter into this Agreement to provide for, among other things, ETC Service as it relates to the Pocahontas Parkway; and

WHEREAS, VDOT has joined the E-ZPass Interagency Group (IAG) on behalf of itself and other Participating Agencies. The E-ZPass Reciprocity Agreement is attached hereto as Appendix A and is considered part of this ETC Agreement;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VDOT and the Participant hereby agree as follows:

ARTICLE 1 – DEFINITIONS

For purposes of this Agreement, the terms set forth below shall have the meanings set forth beside them.

Authorized Department Representative	- Person or officer duly authorized to act on behalf of VDOT
Authorized Participant Representative	- Person or officer duly authorized to act on behalf of the Participant
ETC	- Electronic Toll Collection
ETC Services	- All of those services necessary for the operation of an electronic toll collection system
ETC Services Agreement	- The Agreement between VDOT and the Participant for the provision of electronic toll collection services
E-ZPass	- Trademark for regional ETC system operated by an Interagency Group (IAG) of participants
E-ZPass Reciprocity Agreement	- Agreement requiring reciprocity among Agencies participating in the E-ZPass ETC system
Fiscal Year	- Any 12 month period beginning July 1 st one year and ending June 30 th the following year
Participant	- Transurban - 895
Smart Tag	- VDOT trademark for ETC
STCSC	- Smart Tag Customer Service Center
VDOT	- Virginia Department of Transportation

ARTICLE 2 – ETC SERVICES

Section 2.1 – Provision of ETC Service

By prior understanding of the parties, VDOT is responsible for certain services for both the Participant and VDOT with respect to the administration and operation of the ETC systems on the Pocahontas Parkway and other Smart Tag facilities, including the customer services, distribution of transponders and the collection of tolls (collectively, "ETC Services") for the the Pocahontas Parkway and other Smart Tag facilities through such transponders and the operation of Smart Tag Customer Service Centers ("STCSC") (as defined in Section 2.2).

All Participant policies and procedures that affect VDOT's Smart Tag Customer Service Center Operations are subject to review and approval by VDOT. To the extent that any of Participant's policies and procedures materially and adversely affect VDOT's Smart Tag Customer Service Center Operations, VDOT and Participant shall engage in good faith discussions regarding the implementation of such policies and procedures, including the cure by Participant of any adverse financial affect on VDOT or the Smart Tag Customer Service Center Operations.

By its execution hereof, VDOT shall be deemed to have approved Participant's existing policies and procedures.

Section 2.2 – Smart Tag Customer Service Centers

VDOT shall be responsible for the establishment, administration, and operation of one or more walk-in centers that will issue and provide services relating to the ETC system administration, prepaid account maintenance, and distribution of transponders ("Service Centers") to be used for the ETC systems for the Participant and VDOT facilities. VDOT may contract with a private company ("ETC Servicer") for the provision of such services ("ETC Services") through an ETC Services Agreement. Unless otherwise provided herein, VDOT shall provide the necessary data and communication lines, office supplies and equipment to support the Service Center(s).

VDOT will provide a minimum of seven (7) days advance notice to the Participant of any planned changes to any STCSC location, toll operations and service requirements that materially affect Participant and will, with good faith cooperation, seek the Participant's comments on any such changes and incorporate any mutually agreeable proposals.

Section 2.3 – ETC Prepaid Account

Notwithstanding anything contained in the agreement, VDOT and the Participant acknowledge that:

- (i) VDOT has established, in its name, an ETC Prepaid Account ("Account") for purposes of collecting prepaid tolls, membership fees and transponder fees;

- (ii) VDOT shall be the sole owner of the Account and shall have the exclusive right, power and authority, in the exclusion of the Participant and all other persons, to exercise sole dominion and control of the Account;
- (iii) The Participant shall have no right, title or interest in and to the Account.

VDOT agrees, except in cases of system failure, to initiate payment by wire transfer to the Participant on or before the close of business of the next succeeding VDOT business day, an amount equal to the aggregate tolls and any applicable membership fees posted to patron accounts, less payment of the transaction fee provided as applicable. In the event outstanding bond covenants prohibit netting of the transaction fee from the electronic toll receipts, the transaction fee must be paid upon receipt of an Invoice for Services.

Section 2.4 – Invoices for Services

Any fees for any services including, but not limited to, ETC Services provided by VDOT to the Participant upon request or with the agreement of the other party that are not otherwise paid as provided herein, shall be invoiced to the other party and paid in compliance with the laws of the Commonwealth of Virginia.

Section 2.5 – Disputed Invoices

If either VDOT or the Participant disputes any invoice or payment transaction reported by the ETC Servicer, they shall give prompt notice to the ETC Servicer and each other. Participant shall only reimburse questioned amounts to VDOT upon satisfactory resolution, for any amounts in dispute.

Section 2.6 – Payments by the ETC Servicer

In the event that pursuant to the ETC Services Agreement, the ETC Servicer is obligated to pay VDOT lost revenues or any other sum resulting from the default in or the non-performance of its duties and obligations under the ETC Services Agreement, VDOT shall promptly remit to the Participant its *pro rata* portion of such sums. Such payment shall be based on the product of (i) the historical ratio of the Pocahontas Parkway Transactions to VDOT Transactions over the applicable time period in question for the immediately preceding year (taking into account holiday and weekend travel days), multiplied by (ii) the average percentage traffic increase at the Pocahontas Parkway during the immediately preceding twelve month period; provided that if by reason of catastrophic event, the foregoing calculation is not a fair approximation of the traffic flow for the Pocahontas Parkway for the period in question, then VDOT shall remit such other amount as Participant can establish to VDOT's reasonable satisfaction. Payment to the Participant by VDOT shall be limited to revenues lost by Participant or other sums that Participant can show as a direct loss from any such non-performance.

ARTICLE 3 – ETC SYSTEMS

Section 3.1 – Independent Systems

The Participant operates an ETC system which is independent of but compatible with the VDOT system and uses the same type of transponder.

The Participant shall be responsible for ensuring that its ETC system provides ETC transaction data in the format required by the STCSC. VDOT shall provide data formats, documentation, interface requirements and any other necessary design information to the Participant in a timely manner and at no additional cost to the Participant. Transaction processing problems which arise from the Participant not meeting these requirements shall be resolved at the direction of VDOT on a time plus materials basis. This information is subject to change with reasonable notice from VDOT. Participant will be required to conform to the new interface requirements at no cost to VDOT or Participant may elect to not install new interface requirements and withdraw from the ETC Agreement.

VDOT and the Participant shall each continue to be responsible for the maintenance, repair, and operation of all necessary lane and computer equipment for their respective ETC systems. Specifically, the Participant shall be responsible for the maintenance, repair and operation of all necessary lane and computer equipment for its ETC system through and including its host computer. In no event shall VDOT have any liability to the Participant for any losses suffered due to equipment failure or error in the Participant's ETC system from the lane level through the Participant's host computer. VDOT shall be responsible for the maintenance, repair and operation of its ETC system commencing from the Participant's host router and extending through and including telephone lines, routers, black boxes and the STCSC. Should VDOT's failure to properly maintain, repair and operate its ETC system and the STCSC cause a loss of revenue to the Participant, VDOT shall reimburse the Participant therefor and for Participant's direct costs associated therewith within 14 days after the Participant shall have given VDOT written notice. Such written notice shall include adequate and detailed documentation of such lost revenues and costs. Neither party shall have any liability to the other party for consequential damages.

Section 3.2 – Testing Procedures and Results

VDOT shall be provided the opportunity to participate in the installation of upgrades or other modifications to the Participant's ETC system, as requested. The Participant may participate in the installation of upgrades or other modifications to VDOT's STCSC system.

In such event, each party will provide proposed test schedules and scripts for such upgrades or other modifications to the other party and the STCSC at least 60 days in advance of testing. In the case of upgrades or modifications to Participant's ETC system, upon mutual agreement VDOT may require additional tests to be undertaken at the Participant's expense in order to confirm the accuracy and reliability in all aspects of processing relating to ETC transactions. Copies of test results shall be made available to the other party and the STCSC promptly. VDOT

will participate in acceptance testing and must approve testing prior to processing of live ETC traffic through the STCSC.

Section 3.3 – Modifications to Systems

As equipment changes, modifications or upgrades occur to the ETC systems, the Participant shall use reasonable efforts to cause its ETC equipment used on its toll facility to be compatible with that used by VDOT on its other ETC facilities. The Participant will be responsible for any and all system maintenance, changes, modifications or upgrades to its ETC equipment or operations. Any changes, modifications or upgrades to any of the Participant's ETC equipment or other system modifications that may impact VDOT's ETC operations in any material respect shall be compatible with the VDOT ETC operations. Either party shall notify the other in writing at least 90 days in advance of any changes or modification to such party's ETC system equipment that may affect the other's ETC system equipment or operations in any material respect.

VDOT will exercise due care and diligence in planning and implementing modifications, upgrades and associated testing of its ETC system at levels which are reasonable given the schedule, scope and budget for the ETC system and will not exceed what is considered customary and reasonable for hardware and software processing systems. However, there is no guarantee against adverse impacts to the performance of the hardware or software in Participant's or others' systems. While precautions will be taken by VDOT to help mitigate the risk of occurrence of such adverse impacts, VDOT shall not, unless it is in breach of its duty of due care and diligence, be financially responsible for the occurrence of adverse impact to the Participant or other third parties affected during such modifications, upgrades and associated testing.

Section 3.4 – System Performance

Both the Participant and VDOT shall report within 48 business hours any system failure or degradation that may affect ETC operations. In the event that the Participant is unable to send Smart Tag transactions for periods in excess of 24 hours, the Participant must notify the Manager of the STCSC prior to sending any backlogged Smart Tag transactions. If the STCSC is unable to process Smart Tag or E-ZPass transactions for the Participant for any period in excess of 24 hours, VDOT shall notify the Participant within 48 business hours of such fact.

Any Smart Tag transactions not sent within 60 business days of occurrence are subject to deletion from the patron's account and related revenue may not be recorded or transferred unless the delay is due to failure by VDOT, in which case the related revenue shall promptly be transferred to the Participant.

Section 3.5 – Disputed Transactions

Each business day, the Participant will forward by telecopy or e-mail to VDOT via the STCSC a report listing Smart Tag transactions by lane number from the previous day or weekend, as applicable. Each business day VDOT will cause the STCSC, via telecopy or e-mail, to send the

Participant a disbursement report reflecting Smart Tag and E-ZPass transaction revenue credited to Participant by lane number.

At any time the Participant Smart Tag and E-ZPass revenue reflected in the disbursement report is out of balance with Participant's reported Smart Tag and E-ZPass transactions by \$50 or more for any 3 consecutive days, the Participant will notify the STCSC. STCSC will provide a detailed disbursement file within 5 business days of Participant's notification. The Participant will compare the detailed disbursement report to its detailed audit and provide details regarding the disputed transactions sufficient to update the patron accounts. If the Participant cannot provide detail sufficient to update the patron accounts within 20 business days of the occurrence of the transactions, those transactions will not be charged to patron accounts and will not result in revenue to the facility. The Participant will send the detailed data to the STCSC with comparisons of transactions to include the transaction sequence number(s) and the acknowledgement verification by the ETC system.

E-ZPass transaction/revenue disputes will be resolved on a monthly basis. The STCSC will resolve disputes that are recognized and/or identified as valid by adjusting or offsetting the funds that are owed to the Participant in a subsequent transfer. Any Participant's E-ZPass transactions rejected by their respective home agency will be identified in a report, which will be communicated to the Participant. Rejected transactions will be handled according to documented or generally accepted E-ZPass reconciliation procedures.

ARTICLE 4 - PAYMENT TERMS

Section 4.1 – Transaction Fee

Participant will be responsible for paying a transaction processing fee ("Transaction Fee") per electronic toll transaction. The transaction fee is intended to cover Participant's share of VDOT's total annual ETC expenses and shall be full compensation for VDOT to process tolls electronically and service the Participant's ETC accounts, based on transactions transmitted electronically to the STCSC. The ETC Servicer will manage all responsibilities associated with collection and transmission of revenue back to the Participant.

It is mutually agreed that the transaction fee will cover all of VDOT's cost of operation, including providing and servicing transponders, operation of the STCSC, capital, and other costs associated with the collection of tolls for the Participant. However, VDOT, subject to bond covenants and the affirmative agreement of Participant to right of offset, reserves any rights it may have, if any, to off set against amounts to be transferred from the Account hereunder, any amount due to VDOT pursuant to any final judgment rendered against the Participant in favor of VDOT. VDOT agrees, and the Participant acknowledges, that the agreement to transfer Participant's tolls and any applicable membership fees to the Account is irrevocable unless amended, modified or waived by written agreement of both parties.

Section 4.2 – Basis for Transaction Fee

The Transaction Fee shall be based on the following calculation:

Total ETC costs

Total prior calendar year ETC transactions

Total ETC operational costs shall be based on the sum of the current budgeted cost to VDOT for operating the statewide ETC system, current amortized capital costs allocated to the statewide ETC system, and the annual E-ZPass membership dues, less the annual amount collected for Smart Tag account maintenance fees and other miscellaneous customer charges (e.g., lost transponder replacement fees). In the event that the transaction fees collected are either less than or in excess of the actual budget for the year calculated, the deficiency or excess will then be applied to adjust the next year's budget prior to the new calculation.

The total prior calendar year's ETC transactions shall be based on the total number of ETC transactions recorded on all participating facilities. Annually, but not later than March 1st, VDOT shall provide written notice to Participant of the per transaction fee to be charged in the next fiscal year.

ARTICLE 5 – TERM

The term of this Agreement shall commence upon the date of this Agreement (the "Commencement Date"), and shall terminate on that date which is the earlier to occur of

- (i) the date on which the ETC Servicer is no longer providing services pursuant to the ETC Services Agreement, or in connection with the renegotiation of the current ETC Services Agreement, unless extended by mutual agreement of the parties in connection with the engagement of a substitute ETC Servicer, or the renegotiation of the current ETC Services Agreement.
- (ii) the date on which this Agreement is terminated by either party, or
- (iii) June 30, 2007, subject to renewal beyond that term by successive one year extensions of the term unless and until terminated by written notice received by the other party at least 90 days prior to the end of the term or extended period at issue.

In order to insure continuity of ETC Services to the Participant, VDOT agrees that if the ETC Services Agreement shall for any reason be terminated, or is materially changed or renegotiated, VDOT shall make a good faith attempt (i) in the case where the ETC Services Agreement is materially changed or renegotiated or a substitute ETC Servicer is engaged by VDOT, to give the Participant the opportunity to obtain ETC Services from the current ETC Servicer or such substitute Servicer, as appropriate, under terms substantially the same as those set forth in the ETC Services Agreement and this Agreement pursuant to an amendment to this Agreement or a separate agreement, or (ii) in the case where VDOT is

performing ETC Services for itself, to make ETC Services available to the Participant under terms substantially the same as those set forth in the ETC Services Agreement and this Agreement.

ARTICLE 6 – OPERATIONS

Section 6.1 – Standard Operational Procedures

VDOT shall ensure the establishment and maintenance of standard operating procedures for ETC Services. Once such initial standard operating procedures have been established they shall be attached hereto as Appendix B. The Participant agrees to comply with all such procedures should they decide to maintain a STCSC independently of VDOT.

Section 6.2 – Changes in Operational Procedures

Any anticipated changes that materially affect operating procedures shall be presented and discussed at liaison meetings. VDOT will, in good faith cooperation, try to accommodate changes proposed by the Participant. However, VDOT has sole approval authority to amend operational procedures.

ARTICLE 7 – RESPONSIBILITIES OF VDOT

Section 7.1 – Generally

VDOT shall use commercially reasonable efforts to cause the ETC Servicer to perform its duties and obligations in accordance with the approved operating procedures. If the Participant gives VDOT a written notice stating that the ETC Servicer is not performing its duties and obligations, and specifying the reasons, VDOT shall promptly give the ETC Servicer notice to such effect and request appropriate action. VDOT shall include the Participant in all decisions relating to any such situation. The parties acknowledge that it is not necessary for Participant to be a party to the ETC Services Agreement, provided that VDOT shall be obligated to provide all ETC Services hereunder.

Section 7.2 – Notices

VDOT shall promptly notify the Participant of all changes in ETC Services that are anticipated to materially affect Participant's operations, including with respect to E-ZPass and the E-ZPass Reciprocity Agreement.

ARTICLE 8 – RESPONSIBILITIES OF PARTICIPANT

Section 8.1 – Generally

The Participant shall use commercially reasonable efforts to maintain their ETC system to perform in accordance with the approved operating procedures. If VDOT gives the Participant a written notice stating that their ETC system is not operating in accordance with approved operating procedures, and specifying the reasons, the Participant shall promptly initiate appropriate corrective action. The Participant shall include VDOT in all decisions relating to any such situation. The Participant will take no actions that violate or affect any of the terms of the E-ZPass Reciprocity Agreement that is attached and incorporated as part of this agreement.

Section 8.2 – Toll Rate Changes

The Participant is exclusively authorized to make and be responsible for any toll rate changes at Participant's toll facilities in accordance with applicable law. Participant's toll rate changes shall be communicated to VDOT and the ETC Servicer at least fifteen (15) business days prior to implementation to allow for modifications to the ETC systems and related changes and modifications.

Section 8.3 – Notices

The Participant shall notify VDOT of all changes in their ETC systems that are anticipated to materially affect VDOT and/or ETC operations.

ARTICLE 9 – MARKETING

VDOT and the Participant shall coordinate marketing for the ETC system of toll collections. VDOT and the Participant shall mutually determine a marketing plan. VDOT will, in good faith cooperation, include the Participant in its marketing efforts. However, either party may implement, at its own cost, supplemental marketing efforts for its own roadway which are in addition to those provided by the mutually agreed upon marketing plan. The Participant shall be provided usage of, and is hereby granted a license to use, the "Smart Tag" and "E-ZPass" logos at no charge for operational and marketing purposes and VDOT represents and covenants that it has lawful authority to grant such license; provided that VDOT shall retain the right of prior approval of any such use, such approval not to be unreasonably withheld, conditioned or delayed.

ARTICLE 10 – VIRGINIA TOLL FACILITIES GROUP; LIAISON; MEETINGS

Each of VDOT and the Participant shall designate a person and the Participant will also designate an alternate whose responsibility shall be to meet periodically in order to coordinate

areas of mutual concern and interest to the ETC systems for both the Participant and VDOT, including the Service Centers. Together with others appointed by agencies or bodies for which VDOT is providing ETC Services (such others are "Other Participants"), this group shall comprise the "Virginia Toll Facilities Group" (the "VTFG").

The primary purpose of VTFG meetings shall be to discuss issues related to ETC Services maintenance, improvement, coordination and other issues of mutual interest to the VTFG, including VDOT's ETC budget (for purposes of calculating the Transaction Fee) and the selection and performance of the ETC Servicer. VDOT shall be responsible for coordinating the meetings, which shall be held not less often than quarterly.

The VTFG shall have the responsibility for advising VDOT and the various Participants with respect to ETC systems and performance in Virginia, shall oversee the implementation and performance of ETC systems but shall be an advisory body that may not bind or commit any of VDOT or the various Participants except by duly authorized express delegation for such purpose.

ARTICLE 11 - DISPUTE RESOLUTION

Any dispute that may arise between VDOT and the Participant shall be mutually resolved through the best efforts and good faith negotiations between the Authorized VDOT Representative and Authorized Participant Representative. In conducting such negotiations, VDOT and the Participant recognize that in drafting this Agreement, it is impracticable to make provisions for every contingency that may arise during its term. Accordingly, in order to achieve the resolution of any dispute concerning matters for which the Agreement provides no clear guidance, VDOT and the Participant concur that this Agreement imposes a duty to negotiate in good faith.

ARTICLE 12 - DEFAULT

Section 12.1 – Default Generally

Failure by either VDOT or Participant to fulfill their respective responsibilities set forth herein shall give rise to an event of default under the terms of this Agreement. Following upon appropriate notice of default, and failure to cure within the agreed upon period, the Agreement may be terminated in accordance with Section 12.2 or Section 12.3.

Section 12.2 - Termination by Participant

Both Parties shall determine a mutually agreeable cure period. If the Parties cannot reach agreement on what constitutes a reasonable cure period then VDOT shall make the determination, taking into account the corrective measures to be instituted promptly and pursued diligently by the defaulting Party, except for payments from the Account under Section 2.3 as to which Participant may allow a VDOT cure period in exceptional cases.

Following expiration of the cure period, unless extended by mutual agreement, the Participant shall have the right to terminate this Agreement upon the occurrence of any of the following events:

- (i) A default by VDOT to perform its duties or obligations hereunder or to cause the ETC Servicer to perform its duties or obligations under the ETC Services Agreement; or
- (ii) If the Participant determines that the transaction fee meets or exceeds a level that adversely affects the Participant's operating budget.

Section 12.3 - Termination by VDOT

Both Parties shall determine a mutually agreeable cure period. If Parties cannot reach agreement on what constitutes a reasonable cure period then VDOT shall make the determination, taking into account the corrective measures to be instituted promptly and pursued diligently by the defaulting Party; provided that no cure period shall be less than 60 days. Following expiration of the cure period provided, unless extended by mutual agreement, VDOT shall have the right to terminate this Agreement upon the occurrence of a default by the Participant in the performance of its duties or obligations under this Agreement, including Responsibilities outlined in Article 8.

ARTICLE 13 - MISCELLANEOUS

Section 13.1 – Waivers, Modifications and Amendments

No waiver, modification, or amendment of any term, condition or provision of this Agreement shall be valid or of any force or effect unless made in writing and signed by both VDOT and the Participant. The effect of any such change shall be limited to the extent specified and agreed-to by VDOT and the Participant, as evidenced by signatures of duly appointed officers of each of the parties.

Section 13.2 - Captions

Captions, headings, cover pages and tables of contents contained in this agreement are inserted for convenience of reference only and in no way define, limit or prescribe the scope, intent or meaning of any provisions of this Agreement. All appendices, exhibits, or schedules attached hereto are hereby incorporated herein and made a part of this Agreement.

Section 13.3 - Notices

All notices shall be in writing and shall be delivered personally, by telecopy, or by registered or certified mail, return receipt requested, addressed as follows:

Participant Mailing Address

Regional Operations Manager
Transurban (895) LLC
PO Box 7693
Richmond, VA, 23231
Telephone: (804) 236 3751
Facsimile: (804) 795 1782

VDOT Mailing Address

Commonwealth Transportation
Commissioner
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attention: Commissioner
Telecopier: 804-780-6250

Section 13.4 - Entire Agreement

This Agreement constitutes the entire agreement between VDOT and the Participant concerning the subject matter hereof and supersedes all prior negotiations, representations, and agreements about them, either oral or written.



Section 13.5 - Force Majeure/Emergency

In case by reason of force majeure, either party shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then, provided such party shall give notice and full particulars of such force majeure in writing to the other within a reasonable time after occurrence of the event or cause relied on, the obligations of such party so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. Any time period specified herein for the performance by such party of an obligation shall be appropriately adjusted and extended without the necessity for any amendment to this Agreement if a force majeure event occurs.

IN WITNESS THEREOF, this Agreement has been entered into as of the first date set forth above, by the duly authorized officers of the parties hereto.

**PARTICIPANT
TRANSURBAN (895) LLC**

**VIRGINIA DEPARTMENT OF
TRANSPORTATION**

By: <u></u>	By: <u></u>
Title: <u>Regional Operations Manager</u>	Title: <u>for Gregory A. Whitley Chief Financial Officer</u>
Date: <u>August 4, 2006</u>	Date: <u>August 7, 2006</u>